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In the Supreme Court of the United States

October Term, 1982

WALTER S. BLUME and THE ELECTRODYNE COMPANY, INC.,
Petitioners,

vs.

MINNESOTA MINING AND MANUFACTURING COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF MINNESOTA MINING AND MANUFACTURING COMPANY OPPOSING CERTIORARI

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QUESTION PRESENTED

The case does not present the questions tendered by Petitioners Blume and Electrodyne as follows:

I. Whether inventor Blume was "denied due process" in being adjudged an infringer, because, as he claims:

(a) the District Court "was unable to find any evidence" concerning the nature and operation of the "trade secret process" Blume, to avoid infringement, says he used in lieu of the process of the patent; whereas

(b) such evidence was fully disclosed in video tapes and was orally explained in a "sealed deposition."

II. Whether, on the same purported facts, the ruling below was "clearly erroneous."

III. Whether it is "clearly erroneous" for a court to construe a written release:

(a) contrary to its "plain meaning," and

(b) in favor of the party who drafted the release.

These questions dissolve because:

(a) they lack factual support; both courts below rejected Blume's version of the facts; and

(b) under its established rule this Court does not review factual findings supported by the concurrent findings of both courts below.

The only question that arises is:

Whether "denial of due process" or "clearly erroneous" action results when both courts below—finding Blume's claimed supporting evidence to be "chameleon-like," (A142)[1]—reject his interpretation of the facts and find to the contrary.

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1. The reference is to the Appendix in the companion case, No. 82-1223.

RULE 28.1 STATEMENT

Subsidiaries and affiliates of Minnesota Mining and Manufacturing Company

U.S.:

Cable Networks Incorporated
Eastern Heights State Bank of Saint Paul
Optical Sciences Group, Inc.
3M Data Trak Services, Inc.
Partnership with Telefax, Inc.

Foreign:

Neotechnic Engineering Limited	(U.K.)
P.T. 3M Indonesia	(Indonesia)
Marupi-Riker Company Ltd.	(Japan)
Sumitomo 3M Limited	(Japan)
Yamagata 3M Limited	(Japan)
3M Business Systems Limited	(Japan)
3M Health Care Limited	(Japan)
3M Korea Limited	(Korea)
Minnesota Nigeria Limited	(Nigeria)
Etkins Holdings (Pty.) Ltd.	(So. Africa)

TABLE OF CONTENTS

QUESTION PRESENTED I
RULE 28.1 STATEMENT III
TABLE OF CONTENTS IV
OPINIONS 1
JURISDICTION TO REVIEW 2
STATEMENT OF THE CASE 2
NO BASIS EXISTS FOR REVIEW OF BLUME'S CLAIMS WHICH HAVE BEEN FACTUALLY REJECTED BY BOTH COURTS BELOW 3
I. There Was No Denial Of Due Process 3
II. No "Clearly Erroneous Conduct" Is Pointed To By Blume 4
III. Construction Of The Written Release Was Correct 4
IV. Court Applied Correct Standard In Determining Issues 5
CONCLUSION 6

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OPINIONS

The opinion of the United States Court of Appeals for the Sixth Circuit (by Circuit Judges Jones and Brown and District Judge White) is reported in 684 F.2d 1166 and 215 U.S.P.Q. 585; the opinion of the District Court in the Southern District of Ohio (by Judge David S. Porter) is reported in 533 F. Supp. 493.

These and other opinions in the case appear in the Appendix filed in the companion case, No. 82-1223.

JURISDICTION TO REVIEW

The judgment sought to be reviewed was dated and was entered July 7, 1982; Petition for Rehearing applied for by Blume was denied December 23, 1982; jurisdiction to review is granted by 28 U.S.C. §1254 (1).

STATEMENT OF THE CASE

This case is companion to *Minnesota Mining and Manufacturing Company vs. Walter S. Blume and The Electrodyne Company, Inc.*, No. 82-1223. In that case this Court denied certiorari to review the Sixth Circuit's holding that U.S. Patent 3,235,675 (on a new and more powerful magnet) which Minnesota Mining bought along with other patents from Blume and his associates, is invalid. The case comes now to the Court on the petition of Walter S. Blume and his Electrodyne Company, Inc. They seek review of the judgment of the Sixth Circuit, in the same case, holding U.S. Patent 2,999,275 (covering a process for making the new magnet) infringed.

Minnesota Mining, for $2,267,000, bought the Magnetic Division of Leyman Company of Cincinnati, Ohio, including the patents in suit and others in the field of magnets, of which Blume was the inventor. (A17.) Of the purchase money, Blume received $566,807 for his interest in the patents. (A17, A25, A29.)

Blume respected the patents for some time. However, when Blume's other business ventures failed (A31), he went back into the business of making and selling magnets covered by the patents he had sold. (A35-36.)

The upshot was that Minnesota Mining sued Blume for infringement with the result that:

U.S. Patent 3,235,675, on the new and improved magnet, was held invalid. (A85.) This Court denied certiorari.

U.S. Patent 2,999,275 involved in this proceeding, covering a process for making the new magnet, was held infringed. (A85.)

NO BASIS EXISTS FOR REVIEW OF BLUME'S CLAIMS WHICH HAVE BEEN FACTUALLY REJECTED BY BOTH COURTS BELOW

Blume brings here no problem calling for review. If Blume's case were deemed worthy of review, there would be no ground on which this Court could avoid reviewing the claims of any litigant disappointed with the result below.

I. There Was No Denial Of Due Process

Blume supports his claim of denial of due process on two grounds—each of which the courts below rejected, *viz.*:

1. *Blume's claim that the Court was unable to find any evidence* "concerning the nature and operation" of the trade secret Blume said he used in lieu of the process of the '275 patent he was adjudged to have infringed, was rejected by the trial court. Its conclusion was affirmed by the Court of Appeals on the ground Blume's trade secret process:

> "is, in fact, no different from the 275 patent process and infringes the 275 patent." (A136; See also A85 and A8.)

2. *Blume's claim that his secret process was disclosed* in video tapes and in a sealed deposition was rejected by the courts below.

The video tapes were received in evidence. There is no indication anywhere that the district court did not consider them. Moreover, Blume did not tell the Court of Appeals and has not told this Court what they would show that the district court did not describe about the Blume process.

Blume's claim concerning the sealed deposition the Court of Appeals disposed of as follows:

> "Blume concedes that the deposition he now contends the district court should have reviewed was never offered into evidence." (A9; See also Note 8, A9.)

II. No "Clearly Erroneous Conduct" Is Pointed To By Blume

The events cited by Blume to support his Question I he repeats in his Question II. They provide no better basis for review when repeated.

III. Construction Of The Written Release Was Correct

Blume claims he was released from his obligation not to infringe the patents purchased by Minnesota Mining. The courts below correctly rejected this claim. The agreement specified it was made, as the Court of Appeals pointed out:

> "*with the express understanding* that in making such Matrix-bonded Permanent Magnets you *will not,* prior

to May 1, 1976 *infringe any unexpired patent* in your name which 3M obtained with its purchase of the Magnetic Division of Leyman Corporation, especially your U.S. Patent No. 2,999,275." (A7-8; See also A41, A53-54, A60-62, A68, A71-72, A83.)[2]

The trial court found:

"there were no facts on which Mr. Blume reasonably could rely in thinking that he received such a license." (A49.)

IV. Court Applied Correct Standard In Determining Issues

In rejecting Blume's claims, the Court of Appeals correctly ruled:

"The arguments which Blume addressed to this Court evidence a misapprehension of our role. Fact-finding is entrusted to the district court, and its findings are reversible only for clear error. Fed.R.Civ.P. 52. This Court is not to reconsider the whole evidence *de novo*, and this is all the more true where, as here, the district court's findings depend upon assessments of credibility." (A7.)

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2. Emphasis supplied throughout.

CONCLUSION

The Court should deny the writ.

Respectfully submitted,

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